

DOCUMENT RESUME

02896 - [A1953009]

[Compensation for Standby Duty]. B-187859. July 8, 1977. 3 pp.

Decision re: Albert B. Marino; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (205).

Organization Concerned: Department of the Navy: Naval Shipyard, San Francisco, CA.

Authority: 31 U.S.C. 71. 4 C.F.R. 32.1. 4 C.F.R. 31.7. B-155521 (1965). B-157883 (1965). B-164378 (1976). 22 Comp. Gen. 269. Rapp v. United States, 167 Ct. Cl. 852 (1964). Hawkins v. United States, 167 Ct. Cl. 852 (1964). Parley v. United States, 131 Ct. Cl. 776 (1955). England et al. v. United States, 133 Ct. Cl. 768 (1956).

Reconsideration was requested of a denial of a claim for additional compensation for services rendered as a firefighter at a naval shipyard. The request, received more than 17 years after date of settlement, was considered untimely, and it did not contain sufficient information to warrant payment.
(HTW)

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Don't forget
to file.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-187859

DATE: July 8, 1977

MATTER OF: Albert B. Marino - Compensation for standby duty

DIGEST:

There is no definite time for filing request for reconsideration of settlement certificate issued by GAO Claims Division. However, request received more than 17 years after date of settlement and more than 11 years after claimant's last correspondence with GAO is not a timely request and full legal review will not be made. Nevertheless, review of factual contentions concerning claim has been made. Request for reconsideration still does not contain sufficient information upon which claim could be paid, and, therefore, settlement is sustained.

This action is in response to a request for reconsideration of the denial on December 30, 1958, by our Claims Division, of the claim of Mr. Albert B. Marino for additional compensation alleged to be due for services rendered as a firefighter at the United States Naval Shipyard, San Francisco, California, during the period extending from May 29, 1945, to March 14, 1953. The claim was disallowed on the ground, among other things, that the claim was stated in very general terms and because the claimant did not furnish a statement, with reference to the evidence upon which it was based, of the dates on which actual duty claimed was performed and the number of hours of actual duty claimed for each such day.

The record shows that Mr. Marino's next letter pertaining to his claim was received in our Office on June 1, 1964. On June 10, 1964, Claims Division advised Mr. Marino that he still had not provided sufficient information upon which payment could be based. On February 25, 1976, our Office received a letter from Mr. Roland W. Belanger, an attorney representing Mr. Marino, requesting reconsideration of Claims Division's December 30, 1958, settlement denying Mr. Marino's claim.

Under our regulations, 4 C.F.R. § 32.1 (1977), review of settlements is discretionary with the Comptroller General. We have generally required that requests for review be submitted within a

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reasonable time, and have held that 3 years (B-157883, December 30, 1965), 8 years (B-155521, February 23, 1965), and 9 years (Matter of Llewellyn Lieber, B-164378, April 28, 1976) are not reasonable times. Without attempting to strictly define what constitutes a reasonable time, we do not believe that a request for reconsideration submitted more than 17 years after the date of the settlement and more than 11 years after the last receipt of correspondence from the claimant is a timely request for reconsideration. Therefore, we will not conduct a full legal review of that settlement.

Nevertheless, we have examined Mr. Marino's claim and Mr. Belanger's factual contentions in requesting reconsideration of the December 30, 1958, settlement. We point out that the request for reconsideration still does not contain sufficient information upon which payment of the claim could be based. Section 71 of title 31 of the United States Code (1970), which provides our statutory authority to settle and adjust claims brought against the Government, leaves to the discretion of this Office what evidence is required in support of such claims. See 22 Comp. Gen. 269 (1942). Moreover, the burden of proof as to the existence and non-payment of a valid claim against the Government is on the person asserting such claim. 4 C.F.R. § 31.7 (1977).


Furthermore, the submission indicates that Mr. Marino worked on the basis of 24 hours on duty and 24 hours off duty. During the 24-hour period in which Mr. Marino was on duty, he was required to remain at the fire station. He was compensated for only 16 hours during each of these 24-hour periods and is claiming compensation for the remaining 8 hours. For employees who are in a standby status such as firefighters we have adopted the so-called "two-thirds rule," wherein two-thirds of each hour of 24 on the job is to represent time in a pay status and one-third as time out for sleeping and eating.

For the proposition that sleeping and eating time is non-compensable even when the employee is required to be on the employer's premises see Rapp v. United States and Hawkins v. United States, 167 Ct. Cl. 852 (1964), and the cases cited therein. For the exception to the rule, i.e., where substantial labor is performed in the time set aside for sleeping and eating see Farley v. United States, 131 Ct. Cl. 776 (1955), and England, et al. v. United States, 133 Ct. Cl. 768 (1956). Since there is no evidence of substantial labor

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having been performed during the 8 hours set aside for eating and sleeping and since Mr. Marino has already been compensated for the other 16 hours, Mr. Marino's claim is not properly payable.

Accordingly, the action taken by our Claims Division on December 30, 1958, denying the claim of Mr. Albert B. Marino for additional compensation allegedly earned as a firefighter at the United States Naval Shipyard, San Francisco, California, is affirmed.


Deputy Comptroller General
of the United States